

739 KAR 2:040. Survivor benefits for death of a firefighter.

RELATES TO: KRS 61.315, Chapter 95A, 136.392

STATUTORY AUTHORITY: KRS 61.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315(3) authorizes the payment of survivor benefits of \$80,000 to the survivor of a paid or volunteer firefighter who is killed in the line of duty after July 1, 2002. This administrative regulation establishes the procedures and criteria that shall be utilized to determine the eligibility of the paid or volunteer firefighter's survivor benefits.

Section 1. Definitions. (1) "Child or children" means a:

- (a) Biological child or children, including a child or children born after the firefighter's death;
- (b) Stepchild or stepchildren; and
- (c) Legally adopted child or children.

(2) "Commission" means commission as defined by KRS 95A.210(1).

(3) "Death in the line of duty" means death that occurs as a direct result of an act or acts in the "performance of duty" as defined in subsection (6) of this section and includes death that results from a heart or circulatory malfunction that is treated within forty-eight (48) hours after participation in the performance of these duties or as the result of illness, cancer as established in KRS 61.315(10), or other sickness or injury caused by the performance of these duties that result in death within twelve (12) months of the activities as established in this administrative regulation, if death is not caused by suicide or self-inflicted injury.

(4) "Firefighter" means firefighter as defined by KRS 61.315(1).

(5) "Heart or circulatory malfunction" means myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident that the symptoms are first medically treated within forty-eight (48) hours after participation in the performance of the duties of a paid firefighter as established in subsection (6) of this section.

(6) "Performance of duty" means a firefighter acting in the performance of his or her duties while engaged in the following activities if the activities are performed at the direction or with the knowledge of an officer of the fire department or if immediate action is required at the scene of an emergency not involving his department or other emergency organization:

- (a) Firefighting;
- (b) Fire drills or other related training;
- (c) Rescue or emergency activities;
- (d) Repairing or doing other work about or in the fire or emergency apparatus or building and grounds of the fire department;
- (e) Traveling to or from a call for service;
- (f) Riding in or upon the fire or emergency apparatus that is owned or used by the fire department;
- (g) Performing other activities of the fire department as authorized by the jurisdiction that the department serves; or
- (h) Attending meetings related to the fire service and travel to and from the meetings, as long as he or she is representing his or her local, state, or national fire related organization.

Section 2. Requirements for Eligibility. (1)(a) If death occurs after twelve (12) months and is related to the causes established in KRS 61.315(10)(b), the commission shall review the conditions to determine if the death constituted death in the performance of duty.

(b) Survivors. Benefits shall be paid to the surviving spouse, surviving child or children or both; or the surviving parents, as set forth in KRS 61.315(2).

(2) Heart or circulatory malfunction limitations. If an individual becomes an active member of a fire department and has not within five (5) years prior to the date of membership been medically diagnosed as having had or has received any medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, his or her eligible survivors shall receive the benefits if the firefighter dies in the line of duty.

(a) If the firefighter has been medically diagnosed as having had or receiving medication for an illness established in this subsection within five (5) years prior to becoming an active member of a fire department and presents a medical statement to the commission from the firefighter's doctor that the firefighter has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting, the eligible survivors shall be eligible to receive the benefits granted through KRS 61.315 if the firefighter is killed in the line of duty.

(b)1. If a firefighter of a fire department is medically diagnosed as having had or is prescribed medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident and returns to active fire service, his or her survivors shall not be eligible to receive benefits from this program in event of the firefighter's death caused by heart or circulatory malfunction until a medical statement from a physician establishes that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting is supplied the commission.

2. Upon review and approval pursuant to KRS Chapter 61 and this administrative regulation, of the statement by the commission, the firefighter's survivors shall become eligible to receive benefits from this program.

(c) A deceased firefighter's survivors shall not be eligible for benefits under this administrative regulation if the deceased firefighter was mistakenly or fraudulently included on a fire department's roster, or did not actively serve as a firefighter for a minimum of five (5) years prior to diagnosis of the cause of death.

(3)(a) Autopsy. The commission shall reserve the right to request an autopsy providing sufficient cause is shown for this request.

(b) If an autopsy is performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be submitted to the commission.

Section 3. Application. (1)(a) Upon the death in the line of duty of a firefighter, the fire department of which the firefighter was a member at the time of death shall notify the commission's administrator of the death immediately.

(b) Upon receipt of the notification, the administrator shall submit the Report of Firefighter's Death, Form KPF-4, to the notifying fire department in care of the chief; Claim for Survivor Benefits Form KPF-5, to the known survivors of the deceased firefighter; and the Requirements for Cancer Death Benefits form to both the notifying fire department in care of the chief and the known survivors of the deceased firefighter.

(2) Upon receipt of the forms required by subsection (1) of this section, the chief and survivors or their representative shall complete the forms and return them to the commission in care of the administrator.

(3) Upon the receipt of the completed forms established in subsection (1) of this section, a licensed physician member of the commission shall review all pertinent medical records and forms submitted on behalf of the deceased firefighter and make a medical determination of if the conditions surrounding the death qualify the family members for benefits pursuant to this administrative regulation.

(a) Upon the medical director's determination that the requirements of KRS 61.315 and this administrative regulation have been met, a committee of the commission appointed by the chair of the commission shall review the forms and forward the forms with the commission's

recommendations to the full commission for determination of eligibility.

(b) If there are questions about the forms, the committee and the administrator may seek clarification of the questions on behalf of the commission.

Section 4. Certification of Payment of Benefits. Upon certification of survivorship rights to the Firefighter's Death Benefit, the sum of \$80,000 shall be paid in check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2) and the treasurer shall transmit the check to the commission's administrator for payment to the eligible survivor or survivors.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Report of Firefighter's Death", Form KPF-4, November 7, 2016;
- (b) "Claim for Survivor Benefits", Form KPF-5, December 1, 2014; and
- (c) "Requirements for Cancer Death Benefits", July 2016.

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m. (11 Ky.R. 912; eff. 12-11-1984; Am. 16 Ky.R. 1505; eff. 3-8-1990; 19 Ky.R. 2127; eff. 5-10-1993; 25 Ky.R. 1202; 1608; eff. 1-8-1999; recodified from 815 KAR 45:060, 3-27-2002; 43 Ky.R. 327, 981; eff. 1-6-2017.)